

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997)
_____)

Docket No. R97-1

**MOTION OF ASSOCIATION OF ALTERNATE POSTAL SYSTEMS
TO COMPEL PRODUCTION BY THE UNITED STATES POSTAL
SERVICE OF REPORT ON ALTERNATE DELIVERY
(September 25, 1997)**

We've been here before. On September 5, 1997, the Association of Alternate Postal Systems submitted the following request to the Postal Service:

AAPS/USPS-6

Has the Postal Service conducted or commissioned a study on alternate delivery since the SAI report revealed during the course of Docket No. MC95-1? If so, please provide a copy of any completed study or report or a description of any work in progress.

This request elicited the September 15, 1997 Objection by the Postal Service, which claims that "subsequent research conducted by SAI as responsive to AAPS' request" will not be provided because it is allegedly irrelevant, commercially sensitive, and "confidential, proprietary, and/or a trade secret possessing competitive value."

Without seeing the material in question, AAPS is hard-pressed to refute claims of commercial sensitivity and possible competitive harm to the Postal Service if the material is disclosed. However, it is possible to address the claim of irrelevance.

With a statute requiring that the Postal Service and the Rate Commission consider the effect of rate changes on competition, it is difficult to credit an argument that information related to admitted competitors is irrelevant to this or any other rate case. The Postal Service's attempt to distinguish its filing in this case from its reclassification filing is interesting but unavailing. The fact that this case contains no request to reclassify based upon a competitive threat merely means that the information is relevant for a different reason, not that it is irrelevant. Section 3622(b)(4) remains an applicable statutory standard, especially in a case in which the Postal

Service proposes to *reduce* the rates for the most significant material for which it permits AAPS members to compete.¹

Moreover, much of the Postal Service's case—and especially its favorable presentation of Ramsey pricing—depends upon its witnesses' assessment of elasticity of demand, which in turn requires an examination of alternatives and competitors. The requested information appears from the Postal Service's description to be the very information that would (or at least should) be part of that examination.

In addition, the Postal Service's rate design witnesses have departed in substantial ways from rates they would otherwise have proposed to mitigate rate increases on mailers, and they have coupled that admirable concern for mailers with statements that such forbearance should not adversely affect competitors or competition. The requested information certainly appears to be relevant to the effects on competition that the Postal Service's witnesses claim to have considered.

However, as in the reclassification case, we are faced here with a situation in which the Postal Service appears to have shielded its own witnesses from this obviously relevant information, and then claims that the parties may not examine it for that reason. Thus Witness Tolley, in response to ABP/USPS-T6-5 (a), states that he is “not aware of any Postal Service studies of the alternate delivery of periodicals,” even though the Postal Service now asserts (Objection at 4) that the information cannot be revealed because it would result in competitive harm to the Postal Service in the market for Periodicals services.

Postal Service witness Moeller, who concludes (Testimony at 35) that the proposed ECR rates will not adversely affect competitors, responded to AAPS/USPS-T30-1 (d) with the statement that “as far as I am aware,” information on the “costs, prices and volumes” of competitors “is not available.” Mr. Moeller would have been well-served to have read the Postal Service objection filed four days before that response, for there the Postal Service admits (Objection at 6) that the new SAI material includes information on “pricing,” on “annual volume,” and on “profitability potential” of the very competitors as to which Mr. Moeller believed no such information was available.

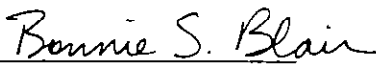
As stated and demonstrated above, there can be no legitimate challenge to the relevance of the requested material. Theoretically, at least, there may be some legitimacy to claims of confidentiality and competitive harm, although the relative sizes of the Postal Service and those companies engaged in the alternate delivery of periodicals and advertising create doubt that it is competitive harm, rather than, perhaps, inconsistency with the testimony of its witnesses, with which the Postal Service is truly concerned.

¹ What if, for example, the study advises the Postal Service that, having damaged alternate delivery by reducing the rates for high-density periodicals in the last case, it can finish the job by reducing ECR rates for pieces above the break point in this one?

Nevertheless, in an effort to avoid this very pleading and to accommodate the legitimate concerns of the Postal Service, counsel for AAPS contacted counsel for the Postal Service to suggest that this SAI material be handled in the same way that the SAI report was handled in MC95-1. That is, AAPS agreed that the material would be viewed only by counsel for AAPS under any protective order the Postal Service deemed appropriate, in this way providing an opportunity for AAPS to determine whether, in fact, the information is relevant and to assure that no information is disseminated to any competitor. Should any information in the report be deemed relevant by AAPS, then the parties would attempt to work out—as they did in MC95-1—a means for entering that information in the record that protected the legitimate interests of the Postal Service. On September 22nd, the Postal Service stated that it would not agree, and this motion follows.

For the foregoing reasons, AAPS respectfully requests that the Postal Service be directed to produce the SAI material identified above, pursuant to an appropriate protective order if it so elects.

Respectfully submitted,

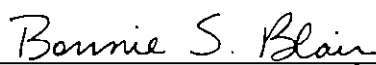

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September 25, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Commission's Rules of Practice.


Bonnie S. Blair, Esq.

Dated: September 25, 1997